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7
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 LEONOR F. TIONGSON,) No. TAC 16-05
12)
Petitioner,)
13)
vs.)
14)
PENELOPE LIPPINCOTT, an individual dba) DETERMINATION OF
15 FINESSE MODEL MANAGEMENT aka FINESSE) CONTROVERSY
MODELS,)
16)
Respondent.)
17

18 The above-captioned matter, a petition to determine
19 controversy under Labor Code §1700.44, came on regularly for
20 hearing on July 18, 2005 in San Francisco, California, before the
21 undersigned attorney for the Labor Commissioner, assigned to hear
22 the matter. Petitioner, LEONOR F. TIONGSON appeared and was
23 represented by Isaac Tiongson; Respondent, PENELOPE LIPPINCOTT
24 appeared and was represented by her attorney, Ben Gale. For
25 purposes of hearing, this matter was consolidated with two other
26 petitions filed against the same respondent, TAC No. 14-05, filed
27 by Laurel Suess, as guardian ad litem for Martina Suess, a minor,
28 and TAC No. 18-05, filed by Virginia Mylenki. Based on the

1 evidence presented at this consolidated hearing and on the other
2 papers on file in this matter, the Labor Commissioner hereby adopts
3 the following decision.

4 FINDINGS OF FACT

5 1. At all times relevant herein, Penelope Lippincott was an
6 individual doing business as Finesse Model Management aka Finesse
7 Models (hereinafter "Respondent"), located in Sausalito,
8 California. Respondent has not been licensed as a talent agency by
9 the State Labor Commissioner at any time while doing business as
10 Finesse Model Management aka Finesse Models.

11 2. At all times relevant herein, Leonor F. Tiongson has
12 resided in El Cerrito, California. In early July 2004, Tiongson
13 met with Lippincott to discuss the possibility of obtaining
14 modeling work. At this meeting, Lippincott stated that "Finesse
15 models are the highest paid in the industry, and there are many
16 jobs available because we have many clients." Excited about the
17 prospect of beginning a modeling career, on July 7, 2004, Tiongson
18 enrolled in a professional modeling workshop offered by the
19 Respondent, and paid the Respondent for this workshop, and for an
20 on-location photo shoot and a studio shoot, along with the services
21 of a professional make-up artist and hair stylist, and for 100 zed
22 cards¹ and a portfolio, with a total payment of \$5,529 to Finesse
23

24 ¹ The two-sided zed cards show five photos of Tiongson, and
25 list her first name, height, measurements, dress size, and the
26 color of her hair and eyes. It also contains the name, address and
27 telephone number of Finesse Model Management, printed onto the card
28 (i.e., not affixed to a removable sticker). Zed cards are
typically used in the modeling industry as the means of advertising
the model to a potential customer, and providing the customer with
a number to call for securing the model's services. In written
materials provided to its models, Respondent explained, "your ZED
card is the most important tool we have with which to market

1 Model Management. There was no formal written contract reflecting
2 the agreement between petitioner and respondent for the purchase of
3 these products or services, however, Respondent provided the
4 petitioner with a printed description of all of its "programs" and
5 "packages," and their costs, and there is a written purchase order
6 reflecting indicating which "programs" and "packages" were
7 purchased, and the amount paid. Neither the written description of
8 the various "programs" and "packages," nor the purchase order
9 contain any statement indicating that petitioner had a right to a
10 refund, or a right to cancel the agreement to purchase the services
11 or products.

12 3. Also, on July 7, 2004, Respondent provided Tiongson with a
13 document entitled "Job Payment Schedule- Year 2004," which stated
14 some of respondent's practices regarding modeling assignments and
15 the payment of models. Among other things, this document provided
16 that "Finesse will invoice clients after all time sheets have been
17 turned in," that models should "allow 60-90 days from completion of
18 job for model pay," and that job checks are distributed only once a
19 month, at a meeting on the second Tuesday of each month. Finally,
20 the document purports that the models are independent contractors,
21 and further purports to release Finesse from liability for any
22 injury that may occur while performing work on the premises.

23 Another document, provided to petitioner on July 7, 2004, entitled

24 _____
25 you....Your fashion ZED card is submitted for Fashion Runway and
26 Print work." In a document given to its models, explaining
27 audition policies and procedures, models were instructed to "make
28 sure to bring portfolio and zed card to all auditions." Respondent
never offered to provide zed cards to petitioner without
respondent's business name, address and phone number, or with any
other business name, address and phone number as a contact for
potential purchaser's of the petitioner's modeling services.

1 "Model Checklist," purports: "Finesse Model Management or any part
2 of the Finesse organization is not a Modeling & Talent Agency and
3 are not subject to the rules and regulations of a licensed Agency."

4 4. On September 23, 2004, Tionson received a letter from
5 Respondent inviting her to a modeling convention in New York City
6 from March 26-31, 2005. After attending an informational meeting
7 at the Respondent's studio in early October, Tionson decided to
8 sign up for the modeling convention, and on October 13, 2004, she
9 charged \$1,500 on a credit card as a partial deposit for the
10 modeling convention, with this amount payable to Respondent, and on
11 October 14, 2004, she charged \$847.50 on another credit card as a
12 second partial deposit for the convention, also payable to
13 Respondent. In January 2005, Tionson decided that she did not
14 want to attend the convention, and she asked Respondent to refund
15 these two charges. Respondent refused. The \$1,500 charge was
16 disputed and subsequently reversed by the credit card company, but
17 attempts to reverse the \$847.50 were unsuccessful.

18 5. Respondent maintained a telephone number that provided
19 ~~recorded information about upcoming auditions for modeling work.~~
20 This information was frequently updated, and in a written document
21 given to all models "on the Finesse roster," Respondent listed this
22 number and directed the models to "call the Finesse 'hot line'
23 daily.... It is your responsibility to keep abreast of open calls
24 and job opportunities." This same document warned models to "never
25 ever give out your home phone number or address to the client," on
26 an audition, but instead to "always give out the Finesse phone
27 number and address." Next, models were instructed to "call the
28 Finesse 'Hot Line' for audition results, call backs, etc." In

1 another document dealing with modeling assignment policies and
2 procedures, Respondent instructed its models "to call Finesse and
3 let us know of your finish time and a brief rundown on the job, as
4 soon as the assignment is completed. Finally, in a document
5 entitled "Who to Contact," Respondent instructed its models to
6 contact Brandi Morgan (Penelope Lippincott's daughter) for
7 "job/audition information," and to learn "what jobs I have been
8 submitted for."

9 6. Lippincott's business card, which she provided to models
10 and to clients, identified her as a "model & talent manager."

11 7. Petitioner testified that based on the manner in which
12 Respondent operated its business, and the content of written and
13 oral communications with the Respondent, petitioner believed that
14 Respondent was offering or promising to obtain modeling employment
15 on her behalf with third party clients, and that Respondent was
16 attempting to obtain (and had obtained) such employment for her.

17 8. Tiongson obtained four modeling jobs through Respondent,
18 during the period from September through December 2004, consisting
19 of a print modeling job for Stella's Fine Consignments, a retail
20 store, performed on September 15, 2004, for which she was paid \$125
21 on December 4, 2004; a print modeling job for Corin Rasmussen
22 Jewelry Designs², performed on September 27, 2004, for which she
23 was paid \$125 in January 2005; a fashion runway modeling assignment
24 at the New Park Mall, performed on November 13 or 14, 2004, for
25

26 ²Tiongson got this job after auditioning for it at
27 Respondent's headquarters. The client, Corin Rasmussen, was
28 present at the audition and decided which models should be hired
for the job, and which pieces of jewelry should be worn by each
model for the photo shoot.

1 which she was paid \$125 on March 8, 2005; and a runway modeling
2 assignment for a fashion show that was organized by Respondent in
3 order to promote Respondent's business, held on December 2, 2004,
4 for which she was paid \$125 on March 8, 2005. Also, in December
5 2004, Respondent offered Tiongson a modeling job for a lingerie
6 advertisement for Chadwick's of London, but Tiongson declined the
7 offer. Payments for all of the modeling jobs were made by
8 respondent, and the amounts earned by petitioner for each job are
9 reflected in documents entitled "Model Job Payment Acknowledgment."
10 According to these documents, respondent did not deduct any
11 commissions from these amounts, and there was never any agreement
12 between the parties which would have allowed respondent to charge
13 the petitioner any commission or fee in connection with these jobs.

14 9. Respondent testified that Finesse never procured
15 employment for a model with any third party, and that she never
16 negotiated with any third party as to what a model should be paid
17 for modeling services. Instead, according to Respondent, Finesse
18 enters into agreements with third parties for the purchase of
19 Finesse's services as a "production company," and under these
20 agreements the third party pays Finesse to produce a fashion runway
21 show or a print advertisement³. Clients are not billed for the

22
23 ³ Following the close of the hearing, Respondent provided
24 copies of only two such agreements to produce events. The first,
25 concerned an event at which the petitioner did not provide modeling
26 services, the October 7, 2004 "Weddings in the Wine Country Bridal
27 Fashion Show." The second, an agreement between "Finesse Modeling
28 Agency" (another of Respondent's fictitious business names) and
General Growth Properties, Inc./New Park Mall, concerning the
November 13, 2004 fashion show at that mall, under which Respondent
agreed to provide models, contact mall tenants for fittings prior
to the start of the fashion show, run the fashion show, and return
the merchandise to retailers after completion of the show.
Respondent did not provide copies of agreements to produce any

1 models' services, they are billed for Finesse's "production
2 services." In its capacity as a "production company," Finesse
3 hires the necessary models, photographers, graphic designers, hair
4 stylists, etc., needed to perform the job for which Finesse was
5 hired. Finesse, not the third party client, decides how much to
6 pay the models, and anyone else hired in connection with the
7 production, as compensation for their services, and these payments
8 are made by Finesse⁴. However, Respondent admitted that the
9 decision on which model to hire for a job is not hers alone,
10 acknowledging that she "need[s] to show clients zed cards, so they
11 can decide whether a model has the look they want."

12 10. Tiongson filed this petition to determine controversy on
13 March 22, 2005, and filed an amended petition on June 21, 2005,
14 seeking an order for reimbursement of the \$5,529 she paid to
15 Respondent on July 7, 2004 for various services, including
16 photographs, zed cards, and modeling workshops, and the \$847.50 she
17 paid to Respondent on October 14, 2004 as a deposit for the
18 modeling convention, for a total of \$6,376.50, and for an award of
19 ~~all appropriate penalties under the Talent Agencies Act.~~

20 11. Respondent filed an answer to the petition on May 15,
21 2005, asserting that "Finesse is not in the business of procuring
22 work for models," but "simply hires models, photographers,

23 _____
24 other fashion show or print advertisement.

25 ⁴ Despite the fact that the model's rate of compensation was
26 solely determined by Finesse, Respondent insisted that these models
27 are not employees of Finesse, but rather, independent contractors.
28 Models were required to sign an acknowledgment stating that "all
models are independent contractors." Respondent testified that in
accordance with her belief that the models are independent
contractors, Respondent is not covered by any workers compensation
insurance policy.

1 stylists, make-up artists and graphic designers on a per assignment
2 bases [sic] for the projects that we are engaged to develop or
3 produce." According to Respondent, her business consists of "a
4 full service marketing and production company," Finesse Creative
5 Productions, which "specializes[s] in the production of print ads,
6 live productions and promotional events, for retailers, designers
7 and manufacturers," and which "own[s] a new bay area fashion
8 magazine, where advertising is sold and ad development is a service
9 provided to our clients." In addition, the answer states that "we
10 have an In-House model development division, Finesse Model
11 Management," which runs "workshop programs ... strictly for skill
12 development." Finally, Respondent's answer acknowledged that
13 although she operated a talent agency, known as Clymer's Modeling
14 and Talent Agency, for a period of time from the late 1980's to
15 early 1990's, "[d]ue to the change in laws at that time regarding
16 the agency business we chose to eliminate that service and proceed
17 in production only⁵." In short, as a defense to this petition,

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19 ⁵ Two determinations issued by the Labor Commissioner in cases
20 that were filed against Clymer's Modeling and Talent Agency, TAC
21 No. 11-87 and TAC No. 60-94, explained the various requirements of
22 the Talent Agencies Act. In TAC 60-94, the Labor Commissioner
23 concluded that Respondent (then known by her married name, Penny
24 Clymer) had engaged in the occupation of a talent agency without a
25 license, and for that reason, determined that her contract with a
26 model was void and unenforceable, and ordered her to reimburse the
27 model for unlawfully collected fees. Previously, in TAC No. 11-87,
28 covering a period of time when Respondent was licensed as a talent
agency, the Labor Commissioner ordered the partial reimbursement of
amounts charged to a model for photo composites, and warned
Respondent that pursuant to a newly enacted amendment to the Talent
Agencies Act, talent agencies would no longer be allowed to charge
models anything for photographs. In the face of these Labor
Commissioner determinations, Respondent decided to change the
method by which she conducts her business, believing that by
restructuring as an ostensible "production company," the Talent
Agencies Act would no longer apply to her business operations.

1 respondent asserts that she has not acted as a "talent agency,"
2 within the meaning of Labor Code §1700.4(a), in the course of her
3 dealings with petitioner, and thus, petitioner has no remedy under
4 the Talent Agencies Act. This central issue of this proceeding -
5 whether Respondent acted as a "talent agency" in the course of its
6 dealings with petitioner - is analyzed below.

7 LEGAL ANALYSIS

8 1. Labor Code §1700.4(b) includes "models" within the
9 definition of "artists" for purposes of the Talent Agencies Act
10 (Labor Code §§1700-1700.47). Petitioner is therefore an "artist"
11 within the meaning of Labor Code section 1700.4(b).

12 2. Labor Code §1700.4(a) defines a "talent agency" as any
13 person or corporation "who engages in the occupation of procuring,
14 offering, promising, or attempting to procure employment or
15 engagements for an artist." To be sure, the Labor Commissioner has
16 held that "a person or entity that employs an artist does not
17 'procure employment' for that artist within the meaning of Labor
18 Code §1700.4(a), by directly engaging the services of that
19 artist.... [T]he 'activity of procuring employment,' under the
20 Talent Agencies Act, refers to the role an agent plays when acting
21 as an intermediary between the artist whom the agent represents and
22 the third party employer who seeks to engage the artist's
23 services." *Chinn v. Tobin* (TAC No. 17-96) at p. 7. Following this
24 rationale, in *Kern v. Entertainers Direct, Inc.* (TAC No. 25-96),
25 the Labor Commissioner concluded that a business that provided
26 clowns, magicians and costumed characters to parties and corporate
27 events did not act as a talent agency, within the meaning of Labor
28 Code §1700.4(a). In *Kern*, the respondent set the prices that it

1 charged to customers for the entertainers' services, selected the
2 entertainers that it provided to the customers, determined the
3 compensation that it paid to these entertainers for providing these
4 services, and thus, we concluded, "became the direct employer of
5 the performers." Significantly, however, in both *Chinn* and in
6 *Tobin*, no evidence was presented that the respondents "ever
7 procured or promised or offered or attempted to procure employment
8 for petitioners with any third party. That lack of evidence as to
9 promises or offers to obtain employment with third parties or
10 actual procurement activities" was found to distinguish those cases
11 from cases in which persons or business were determined to be
12 acting as talent agencies within the meaning of Labor Code
13 §1700.4(a). *Chinn v. Tobin*, *supra*, at p. 11. Thus, in determining
14 whether Respondent engaged in the occupation of a "talent agency,"
15 we must analyze whether Respondent engaged in any of the activities
16 which fall within the statutory definition of "talent agency,"
17 i.e., procuring or offering to procure or promising to procure or
18 attempting to procure modeling employment for the petitioner with a
19 third party employer.

20 3. Labor Code §1700.5 provides that "[n]o person shall engage
21 in or carry on the occupation of a talent agency without first
22 procuring a license . . . from the Labor Commissioner." The Talent
23 Agencies Act is a remedial statute that must be liberally construed
24 to promote its general object, the protection of artists seeking
25 professional employment. *Buchwald v. Superior Court* (1967) 254
26 Cal.App.2d 347, 354. For that reason, the overwhelming weight of
27 judicial authority supports the Labor Commissioner's historic
28 enforcement policy, and holds that "even the incidental or

1 occasional provision of [talent agency] services requires
2 licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. These
3 services are defined at Labor Code §1700.4(a) to include offering
4 to procure or promising to procure or attempting to procure or
5 procuring employment for an artist. In analyzing the evidence of
6 whether a person engaged in activities for which a talent agency
7 license is required, "the Labor Commissioner is free to search out
8 illegality lying behind the form in which the transaction has been
9 cast for the purpose of concealing such illegality." *Buchwald v.*
10 *Superior Court, supra*, 254 Cal.App.2d at 355.

11 4. The evidence before us leads us to conclude that at least
12 on some occasions Respondent procured modeling employment for
13 petitioner with third party employers. The evidence with respect
14 to the audition and photo shoot for Corin Rasmussen Jewelry Designs
15 leaves absolutely no doubt that Corin Rasmussen was a third party
16 employer who hired the petitioner to perform modeling services, and
17 that this employment was procured through Respondent's efforts.
18 Despite Respondent's claim that whenever it provided a client with
19 a model's services, she did so as a "producer" of the client's
20 fashion runway show or print advertisement, Respondent failed to
21 present corroborating testimony from any clients. Moreover, the
22 Respondent's documentary evidence related to only some of the
23 modeling engagements which she had obtained for the petitioner.
24 The status of the respondent as a "producer" of these print
25 advertisements and fashion shows is an affirmative defense to the
26 allegation that respondent acted as a "talent agency" by obtaining
27 work for the model(s), and as such, the burden of proof shifts to
28 the Respondent once the petitioner establishes (as was the case

1 here) that the Respondent obtained modeling work for the
2 petitioner. At least as to some of the modeling employment at
3 issue herein, Respondent failed to meet this burden of proof to
4 establish she was the model's employer. But even assuming,
5 *arguendo*, that respondent never procured and never attempted to
6 procure modeling employment for the petitioner with any third party
7 employer, that does not dispose of the question of whether
8 Respondent ever offered to procure or promised to procure such
9 employment for the petitioner. Not only did the petitioner believe
10 that Respondent had offered and promised to do just that, but more
11 importantly, taking the evidence as a whole, we conclude that any
12 reasonable person in petitioner's position would have formed that
13 same belief. There is simply no other way to interpret many of
14 Respondent's policies and procedures, and Respondent's oral and
15 written representations of what she could or would do for the
16 petitioner. These policies and procedures and representations
17 include the use of zed cards with Finesse's name, address and
18 telephone number printed on the cards, instructions that the zed
19 cards are used "to market you," instructions to telephone
20 Respondent's business to find out "what jobs you have been
21 submitted for," business cards that identified the Respondent as a
22 "model and talent manager," instructions to call Respondent's
23 office at the completion of every modeling job to report that the
24 job has ben completed (something that would scarcely seem necessary
25 if Respondent or other employees of the Respondent were involved in
26 the "production" of the fashion show or print advertisement for
27 which the petitioner performed modeling services), and the
28 Respondent's statement that work will be available because "I have

1 lots of clients." Each and every one of these policies and
2 procedures and representations necessarily has the effect of
3 leading the model to believe that Respondent will attempt to
4 procure employment on behalf of the model with third party
5 employers, and thus, as a matter of law, constitutes an offer to
6 procure such employment. Consequently, we conclude that through
7 Respondent's published policies and procedures and representations
8 to models, Respondent "offered to procure employment" for models
9 with third party employers, and therefore, engaged in the
10 occupation of a "talent agency" within the meaning of Labor Code
11 §1700.4(a). As such, despite Respondent's efforts to structure
12 its operations (or perhaps more accurately, efforts to appear to
13 have structured its operations) so as to avoid the requirements of
14 the Talent Agencies Act, Respondent violated the Act by operating
15 as a "talent agency" without the requisite license⁶.

17 ⁶ Ironically, these efforts to reconstitute her business as a
18 "production company" have created a whole new set of liabilities
19 for the Respondent. The evidence presented compels the conclusion
20 that at least as to some of petitioner's modeling assignments,
21 Respondent was the petitioner's employer - by effectively engaging
22 her to perform modeling services as part of a fashion show or print
23 advertisement produced by Respondent, by establishing her rate of
24 compensation, and by exercising control over her work (determining
25 the time and place the work would be performed, the fashions she
26 would wear while modeling, etc.). As an employer, Respondent
27 violated a raft of Labor Code protections for employees, including
28 Labor Code §204 (which requires the payment of wages to employees
no later than 26 days after the work is performed, between the 16th
and 26th day of any month in which the work was performed between
the 1st and 15th day of that month, and between the 1st and 15th day
of the month following any month in which work was performed
between the 16th day and the final day of the month - - regardless
of when the employer receives payment from a customer), Labor Code
§226 (requiring itemized wage statements accompanying each payment
of wages), Labor Code §1299 (requiring employers to keep work
permits on file in connection with the employment of minors), and
Labor Code §3700 (requiring workers compensation insurance
coverage).

1 5. An agreement between an artist and a talent agency that
2 violates the licensing requirement of the Talent Agencies Act is
3 illegal, void and unenforceable. *Styne v. Stevens, supra*, 26
4 Cal.4th at 51; *Waisbren v. Peppercorn Productions, Inc.* (1995) 41
5 Cal.App.4th 246, 262; *Buchwald v. Superior Court, supra*, 254
6 Cal.App.2d at 351. Having determined that a person or business
7 entity procured, attempted to procure, promised to procure, or
8 offered to procure employment for an artist without the requisite
9 talent agency license, "the [Labor] Commissioner may declare the
10 contract [between the unlicensed talent agent and the artist] void
11 and unenforceable as involving the services of an unlicensed person
12 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at
13 55. Moreover, the artist that is party to such an agreement may
14 seek disgorgement of amounts paid pursuant to the agreement, and
15 may be "entitle[d] to restitution of all fees paid to the agent."
16 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. The term "fees" is
17 defined at Labor Code §1700.2(a) to include "any money or other
18 valuable consideration paid or promised to be paid for services
19 rendered or to be rendered by any person conducting the business of
20 a talent agency." Restitution is therefore not necessarily limited
21 to amounts that the unlicensed agent charged for procuring or for
22 attempting to procure employment, but rather, may include amounts
23 paid for services for which a talent agency license is not
24 required.

25 6. With these legal principles in mind, we conclude that as a
26 consequence of Respondent's violation of the Labor Code §1700.5,
27 all agreements between the petitioner and the respondent are
28 illegal and void, and that petitioner is entitled to restitution

1 for all amounts that she paid to respondent for promised goods and
2 services pursuant to any such agreements, i.e., that petitioner is
3 entitled to reimbursement of \$6,376.50.

4 7. Petitioner's right to reimbursement of some of the amounts
5 that she paid to respondent is separately founded upon Labor Code
6 §1700.40. Subsection (a) of §1700.40 provides that "[n]o talent
7 agency shall collect a registration fee." Labor Code §1700.2(b)
8 defines "registration fee" as "any charge made, or attempted to be
9 made, to an artist for any of the following purposes ... (3)
10 photographs ... or other reproductions of the applicant."
11 Subsection (b) of §1700.40 provides that "[n]o talent agency may
12 refer an artist to any person, firm or corporation in which the
13 talent agency has a direct or indirect interest for other services
14 to be rendered to the artist, including but not limited to
15 photography, ... , coaching, dramatic school ... or other
16 printing." Respondent's collection of the \$5,529 that was paid by
17 petitioner (for a photo shoot, zed cards, a portfolio and for
18 attendance at respondent's modeling workshop) is unquestionably
19 made illegal pursuant to Labor Code §1700.40. Penalties are
20 available under §1700.40(a), equal to the amount of the unlawfully
21 collected "registration fee," but only if the artist fails to
22 procure or be paid for employment for which a "registration fee"
23 has been paid. Here, the facts do not allow for the imposition of
24 this penalty.

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1 8. Petitioner may have additional remedies under the
2 provisions of the Advance-Fee Talent Services⁷ Act (Labor Code
3 §1701-1701.20), but those remedies cannot be awarded in the instant
4 proceeding to determine controversy under the Talent Agencies Act
5 (Labor Code §1700-1700.47). Labor Code §1700.44 authorizes the
6 Labor Commissioner to hear and decide controversies arising under
7 the Talent Agencies Act. In contrast, the provisions of the
8 Advance-Fee Talent Services Act ("AFTSA") may be enforced by the
9 Attorney General, any district attorney, any city attorney, or
10 through the filing of a private civil action. (See Labor Code
11 §§1701.15, 1701.16.) Furthermore, under Labor Code §1701.10(a),
12 any person engaging in the business or acting in the capacity of an
13 advance-fee talent service must first file a bond with the Labor
14 Commissioner in the amount of \$10,000, for the benefit of any
15 person damaged by any fraud, misstatement, misrepresentation or
16 unlawful act or omission under the AFTSA. We hereby take
17 administrative notice of the fact that Respondent has not posted
18 such bond with the Labor Commissioner.

19 ///

20 ///

21 _____
22 ⁷The term "advance-fee talent service" is defined at Labor
23 Code §1701(b) to mean a person who charges, or attempts to charge,
24 or receives an advance fee from an artist for any of the following
25 products or services: procuring, offering, promising or attempting
26 to procure employment or auditions; managing or directing the
27 artist's career; career counseling or guidance; photographs or
28 other reproductions of the artist; lessons, coaching or similar
training for the artist; and providing auditions for the artist.
The term "advance fee" is defined at Labor Code §1701(a) as
any fee due from or paid by an artist prior to the artist obtaining
actual employment as an artist or prior to receiving actual
earnings as an artist or that exceeds the actual earnings received
by the artist.

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1) All contracts or agreements between the Respondent and Petitioner are illegal and void, and that Respondent has no enforceable rights thereunder, and

Dated: 11/22/05 Miles E. Locker
MILES E. LOCKER

ADOPTED AS MODIFIED BY THE LABOR COMMISSIONER AS THE DETERMINATION:

Dated: 11/22/05 Romina L. Dell

17

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(Leonor F. Tiongson v. Finesse Model Management;)
(Penelope Lippincott [TAC 16-05])

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On November 23, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

by placing a true copy thereof in envelope(s) addressed as follows:

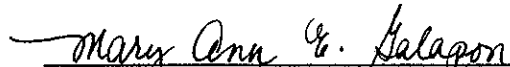
LEONOR F. TIONGSON
1919 Junction Avenue
El Cerrito, CA 94530

BEN GALE, ESQ.
4392 Redwood Highway, Suite 100
San Rafael, CA 94903

PENELOPE LIPPINCOTT
FINESSE MODEL MANAGEMENT
469 Coloma Street
Sausalito, CA 94965

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2005, at San Francisco, California.


MARY ANN E. GALAPON